

HOUSE BILL 2933

By Kelsey

AN ACT to amend Tennessee Code Annotated, Title 20,  
relative to vexatious litigants.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 20, Chapter 1, is amended by adding the sections 2 through 8 of this act as a new part thereto.

SECTION 2. As used in this part, unless the context otherwise requires::

(1) "Defendant" means a person, including a corporation, association, partnership and firm or governmental entity, against whom a litigation is brought or maintained or sought to be brought or maintained;

(2) "Litigation" means any civil action or proceeding, commenced, maintained or pending in any state or federal court;

(3) "Plaintiff" means the person who commences, institutes or maintains a litigation or causes it to be commenced, instituted or maintained, including any attorney at law acting in propria persona;

(4) "Security" means an undertaking to assure payment, to the party for whose benefit the undertaking is required to be furnished, of the party's reasonable expenses, including attorney's fees and not limited to taxable costs, incurred in or in connection with a litigation instituted, caused to be instituted, or maintained or caused to be maintained by a vexatious litigant; and

(5) "Vexatious litigant" means a person who does any of the following:

(A) In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five (5) litigations other than in a small claims court that have been:

(i) Finally determined adversely to the person; or

(ii) Unjustifiably permitted to remain pending at least two (2) years without having been brought to trial or hearing;

(B) After a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either:

(i) The validity of the determination against the same defendant or defendants as to whom the litigation was finally determined; or

(ii) The cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined;

(C) In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay; or

(D) Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence.

### SECTION 3.

In any litigation pending in any court of this state, at any time until final judgment is entered, a defendant may move the court, upon notice and hearing, for an order requiring the plaintiff to furnish security. The motion must be based upon the ground, and supported by a showing, that the plaintiff is a vexatious litigant and that there is not a reasonable probability that the plaintiff will prevail in the litigation against the moving defendant.

### SECTION 4.

At the hearing upon such motion the court shall consider such evidence, written or oral, by witnesses or affidavit, as may be material to the ground of the motion. No determination made by the court in determining or ruling upon the motion shall be or be deemed to be a determination of any issue in the litigation or of the merits thereof.

#### SECTION 5.

If, after hearing the evidence upon the motion, the court determines that the plaintiff is a vexatious litigant and that there is no reasonable probability that the plaintiff will prevail in the litigation against the moving defendant, the court shall order the plaintiff to furnish, for the benefit of the moving defendant, security in such amount and within such time as the court shall fix.

#### SECTION 6.

When security that has been ordered furnished is not furnished as ordered, the litigation shall be dismissed as to the defendant for whose benefit it was ordered furnished.

#### SECTION 7.

When a motion pursuant to Section 3 of this act is filed prior to trial, the litigation is stayed and the moving defendant need not plead, until ten (10) days after the motion is denied, or, if granted, until ten (10) days after the required security has been furnished and the moving defendant given written notice thereof. When a motion pursuant to Section 3 of this act is made at any time thereafter, the litigation shall be stayed for such period after the denial of the motion or the furnishing of the required security as the court shall determine.

#### SECTION 8.

(a) In addition to any other relief provided in this part, the court may, on its own motion or the motion of any party, enter a prefiling order which prohibits a vexatious

litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed. Disobedience of the order by a vexatious litigant may be punished as a contempt of court.

(b) The presiding judge shall permit the filing of that litigation only if it appears that the litigation has merit and has not been filed for the purposes of harassment or delay. The presiding judge may condition the filing of the litigation upon the furnishing of security for the benefit of the defendants as provided in Section 5 of this act.

(c) The clerk may not file any litigation presented by a vexatious litigant subject to a prefiling order unless the vexatious litigant first obtains an order from the presiding judge permitting the filing. If the clerk mistakenly files the litigation without the order, any party may file with the clerk and serve on the plaintiff and other parties a notice stating that the plaintiff is a vexatious litigant subject to a prefiling order as set forth in subsection (a). The filing of the notice shall automatically stay the litigation. The litigation shall be automatically dismissed unless the plaintiff within ten (10) days of the filing of that notice obtains an order from the presiding judge permitting the filing of the litigation as set forth in subsection (b). If the presiding judge issues an order permitting the filing, the stay of the litigation shall remain in effect, and the defendants need not plead, until ten (10) days after the defendants are served with a copy of the order.

(d) For the purposes of this section, "litigation" includes any petition, application, or motion other than a discovery motion, in a proceeding under title 30, 31, 32 or 36, for any order.

(e) The clerk of the court shall provide the judicial council a copy of any prefiling orders issued pursuant to subsection (a). The judicial council shall maintain a record of

vexatious litigants subject to those prefiling orders and shall annually disseminate a list of those persons to the clerks of the courts of this state.

SECTION 9. This act shall take effect July 1, 2008, the public welfare requiring it.